

**NEW RI DISCIPLINE PROCEDURES AND REQUIREMENTS
FOR
ALL STUDENTS
UNDER IDEA 2004 AND
RI LEGISLATION**

EFFECTIVE July 1, 2005

Removals for Less Than 10 days

All Students-

**School Removals for less Than 10 School Days During a
School Calendar Year for a Violation of a Code of Student Conduct**

Options:

1. Removal to appropriate interim alternative educational setting – (continued educational services)
2. Removal to another school setting – (continued educational services)
3. School removal/suspension – (no educational services provided)

Best Practice Considerations:

1. Conduct a Functional Behavioral Assessment
2. Provide behavioral intervention services and modifications that are designed to address the behavioral violation so that it does not recur
3. Develop a behavioral intervention plan for student

Removals exceeding 10 days

Students enrolled in General Education

**School Removals that Exceed 10 School Days During a School Calendar Year for
a Violation of a Code of Student Conduct**

Once a child has accumulated 10 school days of removal from school—

1. RIGL §16-21-27 Alternative education programs. —Each school district shall adopt a plan to ensure continued education of students who are removed from the classroom because of a suspension of more than ten (10) days or who are chronically truant. The plan shall be adopted by the school committee and shall be submitted to the Rhode Island Department of Elementary and Secondary Education as part of its annual strategic plan submission.

Options:

1. Removal to another school setting – (continued educational services)
2. Removal to interim alternative educational setting – (continued educational services)
3. School removal/suspension – (with plan for continued educational services)

Best Practice Considerations:

1. Conduct a Functional Behavioral Assessment
2. Provide behavioral intervention services and modifications that are designed to address the behavioral violation so that it does not recur
3. Develop a behavioral intervention plan for student

Removals exceeding 10 days

Students With Disabilities

School Removals for more than 10 School Days in a School Calendar Year for a Violation of a Code of Student Conduct

Required:

1. Provide continued educational services so as to enable the child to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP (*interim setting determined by IEP team*).
2. Conduct a functional behavioral assessment
3. Provide behavioral intervention services and modifications that are designed to address the behavioral violation so that it does not recur
4. Develop a behavioral intervention plan
5. Conduct a manifestation determination (See Manifestation Determination)

Manifestation Determination—

IN GENERAL – Within 10 school days of any decision to **change the placement of a child with a disability** (see Change of Placement) because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

- (1) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- (2) If the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

Manifestation—

If the local educational agency, the parent and relevant members of the IEP Team determine that either 1 or 2 above is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

Change of Placement—

Occurs once a child with a disability is further removed from school for a violation of a code of student conduct that extends beyond the 10th school day during a school calendar year (beginning on the 11th day of school removal and commencing for each subsequent decision to further remove the child with a disability from school).

Determination that behavior was a manifestation—If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall—

1. Conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, *provided that the local educational agency had not previously conducted such assessment*.
2. In the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and
3. Return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan *unless special circumstances warrant removal to an interim alternate educational setting* (see Special Circumstances).

Special Circumstances—School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child’s disability, in cases where a child—

1. Carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;
2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or
2. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local education agency.

Notification—Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

Determination of Setting—The interim alternative educational setting shall be determined by the IEP Team.

Appeal—

IN GENERAL—The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing. Stay put rules apply (see Stay Put)

Appeals—Authority of Hearing Officer—

IN GENERAL—A hearing officer shall hear, and make a determination regarding an appeal requested under this section.

Change of Placement Order—In making the determination under this section, the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may—

1. return a child with a disability to the placement from which the child was removed; or
2. order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

Placement During Appeals—When an appeal has been requested by either the parent or the local educational agency—challenging a decision regarding placement, or the manifestation determination under this section, the following shall occur:

1. The child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period for school removal, whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and
2. The RIDE shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

Stay Put—Becomes the alternative educational setting established when a child’s educational placement is changed due to a violation of a student code of conduct—*when an appeal is taken under this section*. The stay put can be an appropriate interim alternative educational setting, another educational setting that provides access to general education and special education services or a setting decided and agreed to by the parent and the LEA.

Authority of School Personnel—*Case by case determination*—School personnel may consider any unique circumstances on a case by case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

Students not yet eligible for special education and related services—An LEA is deemed to have knowledge that a child with a disability if, before the behavior that precipitated the disciplinary action occurred, a

- a. Parent expressed concern in writing to an administrator or a teacher; or
- b. Parent of the child has requested an evaluation of the child; or
- c. Teacher or other school or LEA personnel expressed specific concerns about a pattern of behavior demonstrated to an administrator.

ADDITIONAL DUE PROCESS CONSIDERATIONS FOR DISCIPLINE REMOVALS

REMOVALS FOR LESS THAN 10 CONSECUTIVE SCHOOL DAYS

School removals for less than ten (10) consecutive school days require the following minimum standards of due process to be applied:

1. School removals for disciplinary infractions of ten (10) school days or less, the student must be afforded oral or written notice of the charges against him/her;
2. If the charges are denied, the student must be afforded an explanation of the evidence the authorities have; and
3. The student must be afforded an opportunity to present their side of the story.

NOTE: (R.I. RULE) R.I. adds to the above that if the student has not attained the age of majority (18), the notice and reason for the discipline suspension must be provided to the student's parents in their spoken language

Generally, notice and the hearing should precede the student's removal from school, since the hearing can almost immediately follow the misconduct, but if prior notice and hearing are not feasible, they should occur as soon as practicable.

REMOVALS FOR MORE THAN 10 CONSECUTIVE SCHOOL DAYS

The amount of due process afforded increases for removals exceeding 10 consecutive school days. In Rhode Island, under those circumstances, the student must be provided:

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1. A clear written statement of the reason for suspension or long term removal;
2. An opportunity to a more formal public or private hearing;
3. If a hearing is requested, the student is afforded prompt notice of the time and place of the hearing, with a reasonable time to allow for preparation;
4. Opportunity to be represented by legal counsel;
5. If the student is not 18 years old, the parent(s) or guardian is afforded the procedures 1,2,3,4 above;
6. At hearing, the right to cross examine witnesses and to present witnesses on their behalf;
7. A complete and accurate stenographic or electronic record of the hearing including all exhibits;
8. A written decision rendered within a reasonable time, based exclusively on the record detailing the reasons and factual basis therefore;
9. A copy of the decision;
10. A copy of the decision, together with the record must be forwarded to the Commissioner of Education, if there is an appeal of the decision.

NOTE: Students with disabilities receiving special education instruction must be afforded additional rights (see section disciplining students with disabilities within).